IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

THURSDAY, THE 15TH MARCH 2007 / 24TH PHALGUNA 1928

WP(C).No. 8799 of 2007(V)

PETITIONER:

COCHIN CEMENTS LTD.,
8/1072, MEVALLOOR P.O., KOTTAYAM DISTRICT,
REP.BY AUTHORISED SIGNATORY, SRI. V.P.SHARMA.

BY ADV. ADV. SRI. S.GANESH (SR.)
SRI.S.ANIL KUMAR (TRIVANDRUM)
SRI.HARIHARAN NAIR

RESPONDENTS:
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1. THE DEPUTY COMMISSIONER,
COMMERCIAL TAXES, KOTTAYAM.

2. THE SECRETARY TO GOVERNMENT OF KERALA,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

3. THE COMMISSIONER OF COMMERCIAL TAXES,
KERALA, THIRUVANANTHAPURAM-695033.

4. THE ASSISTANT COMMISSIONER(ASSESSMENT)
COMMERCIAL TAXES(SPECIAL CIRCLE), KOTTAYAM.

BY SR. GOVERNMENT PLEADER SRI. MUHAMMED RAFIQ

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 15/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.BALAKRISHNAN NAIR, J.

W.P.(C).No.8799 of 2007-V

Dated this the 15th day of March, 2007

JUDGMENT

The petitioner challenges Ext.P13 order passed by the first respondent under Sec.35 of the K.G.S.T. Act setting aside the final assessment of sales tax for the year 1999-2000 and 2000-2001 and remitting back to the assessing authority for fresh disposal in accordance with law. It also challenges Ext.P18 notice proposing to re-open the assessment for the year 2001-2002 under Sec.19 of the K.G.S.T. Act.

2. The petitioner has been granted exemption from payment of tax for an amount of Rs.40,23,32,660/- for the period 14-10-1995 to 13-10-2002 by the Board of Revenue (Taxes), Thiruvananthapuram for manufacture and sale of Portland Pozzalona Cement under the brand name 'Cochin Cements'. The petitioner was enjoying that benefit and was not collecting tax. While so, Ext.P10 notice was issued by the first respondent proposing to re-open the assessment for the years 1999-2000 and 2000-2001 on the ground that the petitioner is manufacturing and selling cement under the brand name ACC cement and not under the brand name Cochin Cements. The said notice was challenged before this Court. This Court dismissed the writ petition as

the challenge against the impugned order was only a notice. But, this Court made certain observations to the effect that the objections raised by the petitioner against the notice could be considered properly and in accordance with law. Later, the petitioner filed Ext.P12 detailed objection to Ext.P10. The first respondent considered the matter and passed Ext.P13 impugned order setting aside the assessments for the afore-mentioned years and remitted the matter for fresh disposal. In tune with Ext.P13, Ext.P18 has been issued by the assessing authority for re-opening the assessment for the year 2001-2002. The petitioner submits there was no stipulation in the exemption order that the cement should be manufactured under a particular brand name for enjoying the exemption. So, the stand taken in the impugned order that it is not entitled for exemption for manufacturing cement under the brand name ACC Cement is perverse. Relying on the decision of this Court in **Deputy Commissioner of Sales Tax (Law), Ernakulam Vs. M/S. Surya Refineries (P) Ltd. (1991 KLJ (TC) 513)** it is submitted that the first respondent has no jurisdiction or authority to go behind the exemption order granted by the competent authority. But, that was turned in Ext.P13. So, the order is manifestly illegal and perverse and this Court may interfere with the same under Article 226 of the Constitution of India, it is

submitted. So, this writ petition is filed seeking to quash Exts.P13 and P18 as Ext.P18 also suffers from the very same defect raised against Ext.P13.

3. The learned Government Pleader submitted that the petitioner has got a right of appeal against Ext.P13 before the Sales Tax Appellate Tribunal under Sec.39 of the K.G.S.T. Act. Therefore, it is unnecessary for this Court to entertain this writ petition. In answer to the said submission, the learned senior counsel for the petitioner submitted that there is an alternative remedy, the order being manifestly perverse this Court may entertain the writ petition.

4. It is well settled position in law that when the petitioner has got alternative efficacious remedy, it is unnecessary for this Court to entertain the writ petition. It is equally well settled that even if there is an alternative remedy the jurisdiction of this Court is not in any way affected. Whether the writ petition is to be entertained or not is a matter within the discretion of this Court.

5. The Sales Tax Appellate Tribunal is presided over by a judicial member. A District Judge will be the Chairman of each Bench of the Tribunal. Therefore, the remedy before such a Tribunal is definitely an efficacious remedy. When there is a remedy of appeal to such a Tribunal it is unnecessary for this court to entertain this writ

petition. All the contentions of the petitioner against Ext.P13 can be raised before the appellate Tribunal also. In case the appellate Tribunal grants interim stay of Ext.P13, the assessing authority shall keep in abeyance further proceedings pursuant Ext.P18 and await the decision of the appellate Tribunal for finalisation of proceedings pursuant to Ext.P18. Subject to that direction, the writ petition is dismissed without prejudice to the contentions of the petitioner and its right to invoke the appellate remedy before the Sales Tax Appellate Tribunal.

K.BALAKRISHNAN NAIR, JUDGE.

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